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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/852,285	05/10/2001	Martin Mueller	225/49902	3798

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EXAMINER

SMITH, JULIE KNECHT

ART UNIT	PAPER NUMBER
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3682

DATE MAILED: 08/14/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/852,285

Applicant(s)

MUELLER ET AL.

Examiner

Julie K Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 May 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the **release levers** as described in claim 8 and the **cross member** described in claims 4-5 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### *Claim Objections*

2. Claim 16 is objected to because of the following informalities: In lines 6-7 of the claim, the sentence is unclear and may be a result of a typographical error. Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 8 rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The

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release levers described in the claim are not shown in the drawings and not fully described in the specification so as to enable one skilled in the art to make or use the invention.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the fixing" in 12. There is insufficient antecedent basis for this limitation in the claim.

Regarding claim 8, it is unclear to the Examiner whether the word "fixing" is a verb used to describe the movement of the pedal pivot shaft or whether it is referring to the structural element described in the disclosure.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-5, 7, 10 and 13-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Mueller (5,896,781).

Regarding claims 1, 13-14, Mueller discloses a safety device for the support of a brake pedal in a motor vehicle, with a bracket (3) arranged in a wall area of a splash wall that is noticeably deformed into a passenger compartment in the event of a vehicle collision. Mueller further discloses a pedal pivot shaft (4) of a pedal acting on a push rod (15) being mounted in the bracket support, wherein the pedal pivot shaft is mounted in the bracket support guide having limits in each horizontal direction, and the pedal pivot shaft in normal operation being fixed in a forward position of the guide, and a fixing (7) that is neutralized in the event of a head on collision.

Regarding claims 2-5 and 15, Mueller discloses that the fixing (7) is neutralized by a movement of the bracket support (3) relative to a dashboard crossbar of the vehicle that retains a special position approximately unchanged, even in the event of a collision.

Regarding claim 7, Mueller discloses the rearward motion of the pedal pivot shaft in the guide being assisted by a spring (12) in the event of a collision.

Regarding claim 10, Mueller discloses the fixing (7) released by an auxiliary force.

Regarding claim 16, it should be noted that the applicant defines the product in terms of a process by which it is made and the process is nothing more than a permissible technique the applicant may use to define the invention since there is no structural difference is required.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mueller as applied to claims 1-5, 7, 10 and 13-16 above, in view of Nawata et al (EP 0 788 931 A2). Mueller discloses a safety device as claimed, but does not disclose an elongated hole supporting the pedal pivot shaft. However, Nawata et al. teaches an elongated hole (42) supporting a pedal pivot shaft (68).

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide an elongated hole to support the pedal pivot shaft to provide a guide for the pedal pivot shaft to travel along in the event of a collision so as to move the pedal out of the way of the driver's foot and prevent injury while keeping the pedal contained so that it does not interfere with the drivers feet.

9. Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mueller as applied to claims 1-5, 7, 10 and 13-16 above, in view of Langeschei (DE 3401654). Mueller discloses a safety device as claimed but does not disclose the pedal lever being designed as a double shell pedal. However, Langeschei teaches a pedal designed as a double shell pedal.

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide a double shell pedal lever so as to increase the torsional rigidity of the pedal.

Regarding claim 11, Mueller discloses the claimed invention except for the bracket being made of plastic. It would have been obvious to one skilled in the art at the time the invention was made to make the support bracket out of plastic, since it has been held to be within the

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general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. (In re Leshin, 125 USPQ 416.).

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6,289,766 to Sureshita et al.

6,402,262 to Esroy et al.

3,977,732 to Grosseau

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julie K Smith whose telephone number is 703-305-3948. The examiner can normally be reached on Monday-Friday, 8-5:30, (Every other Friday off).


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bucci can be reached on 703-308-3668. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

JKS

JKS

August 6, 2002

  
DAVID A. BUCCI  
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